South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

Vol. 12 May 16, 1995 No. 18

CONTENTS

OFFICE OF RESEARCH
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House Week in Review

By special order, the House on Tuesday debated S. 9, the Senate reapportionment plan. Several representatives offered amendments to change various Senate districts in the Charleston area, the Pee Dee, and in the Upstate, but all these amendments were rejected. Making no substantive changes to the Senate's version of the bill, the House went on to approve the measure by voice vote. After the reapportionment debate, House members took up several other bills that day, beginning with H. 3624, the South Carolina Environmental Audit Act of 1995, under which environmental audit reports are non admissible in civil, criminal or administrative proceedings. The House also gave approval to H. 3581, pertaining to approval of regulations by the General Assembly, and S. 48, which subjects lease purchase or financing agreements to the constitutional debt limit for subdivisions.

On Thursday, representatives and senators were appointed to the conference committee to resolve differences between the House and Senate versions of the general appropriation bill, H. 3362 (proposed state budget) for fiscal year 1995-1996. Speaker Wilkins named House Ways and Means Chairman Henry Brown and Representatives John Felder and Robert Harrell to the committee, while Senate appointees to the conference committee, as made by Lieutenant Governor Bob Peeler, were Finance Committee Chairman John Drummond and Senators Harvey Peeler and Verne Smith. Representatives H. Brown, Felder and Harrell also were appointed to conference committees to resolve differences with the Senate on H. 3363, a joint resolution appropriating money from the Capital Reserve Fund; H. 3647, a bill to suspend the 1993 "Carnell-Felder" act (limitation on general fund appropriations) to provide property tax relief; and H. 3690, a joint resolution to make supplemental appropriations from fiscal year 1994-1995 surplus general fund revenues.

On Wednesday afternoon, the House and Senate convened in joint session to elect members of boards of trustees of several of the state's public colleges, universities and schools, and to elect a members to the Legislative Audit Council and a member to Charleston's Old Exchange Building Commission. Election results were as follows:

COASTAL CAROLINA UNIVERSITY

1st Congressional District, Seat 1: Clark B. Parker
2nd Congressional District, Seat 3: Oran P. Smith
3rd Congressional District, Seat 5: Payne Barnette, Jr.
4th Congressional District, Seat 7: Elaine Marks

5th Congressional District, Seat 9: Juli S. Powers
6th Congressional District, Seat 11: Fred Dubard
At-Large Cong. District, Seat 13: Franklin Burroughs
At-Large Cong. District, Seat 15: Edwin C. Wall, Jr.

MEDICAL UNIVERSITY OF SOUTH CAROLINA

2nd Congressional District: H. Donald McElveen

SOUTH CAROLINA STATE UNIVERSITY

1st Congressional District, Seat 1: Arnold Collins
2nd Congressional District, Seat 2: Anthony T. Grant
4th Congressional District, Seat 4: James L. Bullard
6th Congressional District, Seat 6: Edwin Givens

THE CITADEL

1 At-Large Seat: Dennis J. Rhoad

WIL LOU GRAY OPPORTUNITY SCHOOL

3 At-Large Seats: Betty Henderson
(4-year terms) Vince Rhodes
Louise Scott
1 At-Large Seat: Russell Hart
(2-year terms)

LEGISLATIVE AUDIT COUNCIL

Seat 1: Harry C. "Bunt" Wilson
Seat 2: Philip F. Laughridge
Seat 3: J. Bennette Cornwell, III
Seat 4: Julian B. Wright
Seat 5: Dill Blackwell

OLD EXCHANGE BUILDING COMMISSION

* James M. Eaves

On Thursday, the House approved S. 602, a bill designed to correct problems associated with deregulation of the consumer finance industry, and H. 3765, a bill requiring mandatory arrests in domestic violence cases when there is physical evidence of injury to the victim. The House concluded the week by taking up H. 3730, a bill allowing persons meeting certain conditions to carry concealed weapons. Supporters of the measure claimed that citizens should have the right to carry these weapons as a means of protection against criminals, noting that criminals already are armed and noted that there have not been problems with concealed weapons laws in other states. Opponents, however, expressed concern that relaxing these laws would lead to more violence. Debate on the bill is expected to resume this week.

Comparison and Contrast of House and Senate budget positions on various issues (i.e., how the House and Senate-passed versions of the budget address are similar and different in certain subject matters).
(General Appropriation Bill)

As noted in last week's Update, the Senate finished work on its version of H. 3362, the fiscal year 1995-1996 general appropriation bill (state budget), early Saturday, May 5, following a long week of debate. With there being numerous differences in the House and Senate-passed versions of that bill, a conference committee, as noted earlier in this Update, of representatives and senators has been appointed to resolve differences in the 2 versions. Listed below is a comparison and contrast of what each chamber did on various issues when passing its repsective version of the general appropriation bill. (For example, note that immediately below this paragraph, the House-passed version of the bill does not include a provision extending the life of the Barnwell Facility, while the Senate-passed version does provide for the facility's extension.)

(1) Barnwell Low-Level Radioactive Waste Facility

House: No provision for extending the closing date of the facility past the end of this year (currently the facility is accepting only waste from the 8 states belonging to the Southeast Compact, with the facility having closed to waste from outside the compact last summer and scheduled to close permanently on January 1, 1996).

Senate: Would continue operation of the facility until July 2005, or when another disposal facility is available to South Carolina generators. or when the permitted capacity of the facility has been reached. Imposes a tax of $235 per cubic foot of low-level radioactive waste, with revenues to be deposited in a separate and distinct fund named the South Carolina Educational Assistance Endowment Fund. Prohibits waste generated in North Carolina from being disposed at Barnwell if a new regional facility, to be located in North Carolina, is not operational by next January. Also provides for South Carolina to withdraw from the Southeast Compact. Of the revenues generated from Barnwell, 95 percent would be allocated to this new Educational Endowment Fund and 5 percent would be allocated to Barnwell County. The extension of the Barnwell facility and the higher disposal fees would generate an estimated $137 million annually.

(2) Property Tax Relief

House: Establishes a "State Property Tax Relief Fund" as a separate fund in the State Treasury and requires amounts credited to that Fund to be used to provide property-tax relief for owner-occupied residential property, with the first phase of this relief being used to remove the portion of the homeowner's tax levied for public school operating costs. Also requires the

General Assembly to appropriate funds for this relief beginning in Fiscal Year 1996, and beginning in Fiscal Year 1997 the General Assembly must appropriate one-half (50 percent) of recurring revenue growth for that fiscal year until the phase-out of the residential property tax relief is complete.

Senate: Deletes the House-version of property tax relief as listed in the paragraph above and instead provides an additional $10,000 homestead exemption from property taxes for operating purposes for homeowners, although this exemption does not apply to debt service or lease purchase millage. Local jurisdictions must be reimbursed for this additional exemption in the same manner that they are reimbursed for the $20,000 homestead exemption for persons age 65 or older, blind or disabled.

(3) Single-Gender Education

House: No provision in the budget specifically concerning this matter.

Senate: Declares it is the public policy of the State of South Carolina to support establishment and maintenance of single-gender programs of higher learning for both sexes and requires the General Assembly to provde the necessary funding to establish and maintain approved single-gender offerings. However, this proviso is void if the U.S. Supreme Court issues a ruling which reverses the holding in U.S. v. Commonwealth of Virginia of the U.S. 4th Circuit Court of Appeals (i.e., the legal battle over whether the all-male Virginia Military Institute should be required to admit women). Also voted to expend $3.4 million for a women's leadership institute at Converse College in Spartanburg.

(4) Judicial Reform/Additional Judges

House: No provision for additional judges or reform of the judicial screening process. (One House bill, H. 3841, proposing additional judges for the Court of Appeals, Circuit Court and Family Court, is pending on the House contested calendar, while a number of different bills and proposed constitutional amendments calling for changing the judicial selection and screening process are pending in the House Judiciary Committee at the moment.)

Senate: Increases the number of at-large Circuit judges from 10 to 13; increases the number of Appellate Court Associate Judges from 5 to 8, and adds 3 Family Court judges, with the 9th Circuit (Berkeley and Charleston Counties), 13th Circuit (Greenville and Pickens Counties) and 15th Circuit (Georgetown and Horry Counties) each picking up 1 more Family Court judge. Also creates a 10-member Judicial Merit Selection Panel to assist the General Assembly in selection of qualified justices and judges for vacancies on the Supreme Court, Court of Appeals, Circuit Court, Family Court and the Administrative Law Judge Division. The panel includes 2 Senators (appointed by the chairman of the Senate Judiciary Committee); 2 other persons also appointed by that committee chairman (with these 2 "other" persons being non-legislators and at least one of whom must not be an attorney); 2 House

members (appointed by the chairman of the House Judiciary Committee); 2 persons appointed by the House Speaker who must be non-legislators and at least one of whom must not be a lawyer; 1 member must be the president of the South Carolina Trial Lawyers Association (or his designee), and 1 member must be the president of the South Carolina Defense Trial Lawyers Association, or his designee (with the presidents of those respective organizations serving as ex-officio members of this panel). This panel must submit nominations to the General Assembly after reviewing candidates' qualifications, with there being no limit as to the number of nominations the panel can submit. The panel may not rank the order of the candidates. Members of the General Assembly must resign before submitting an application to this panel, and a former legislator may not have the privilege of the floor while his application is pending. Judicial candidates also may not visit the State House to meet legislators and campaign for office until 48 hours after the panel has submitted its nominations, although this prohibition does not apply if a legislator initiates contact with a judicial candidate.

(5) Restructuring of Commission on Higher Education

House: Did not include in its version of the budget restructuring of the Commission on Higher Education. (However, on April 27 the House passed a separate restructuring bill for this agency, increasing its size from 18 to 19 members and adding members who represent the state's public colleges and universities. The bill also grants additional duties and functions to the Commission as pertains to public institutions of higher learning, such as reviewing undergraduate admissions standards at those institutions, and establishes a 12-member joint committee {4 House members, 4 Senators and 4 persons appointed by the governor} to study the governance and operation of higher education in this State. On May 10, the House amended the Senate's version of CHE restructuring, S. 365, to conform with the House version as passed under H. 3915.)

Senate: Reduces the size of the Commission from 18 to 11 members, all appointed by the governor (though some of whom, as noted in this summary, also must be confirmed by the Senate). Of the 11 members, 6 represent congressional districts (1 from each district), with these 6 subject to confirmation by the Senate and also required to have experience in business, education of future leaders and teachers, management or policy. 3 commission members would serve ex-officio as representatives of public colleges and universities, with 1 serving on the board of trustees of 1 of South Carolina's public senior research institutions, 1 serving on the board of trustees of 1 of the state's 4-year public institutions of higher learning, and 1 serving on a local area technical education commission or the State Board for Technical and Comprehensive Education. 1 ex-officio member must represent independent colleges and universities, and 1 at-large member must serve as chairman. Like in H. 3915, this proviso also grants additional duties and functions to the Commission and establishes a 12-member joint legislative committee to study the governance and operation of higher education in South Carolina.

(6) Education Funding (Public and Higher)

House: With regard to public education, House reduces the EIA (Education Improvement Act) program by $32 million, while reducing higher education funding by $14 million.

Senate: Spends $42 million more than the House on the annual operating budget of public schools and increases higher education funding by $14 million.

(7) Soft Drinks Tax Phase-Out

House: Phases out the soft drinks tax over 6 years, beginning in the upcoming fiscal year (1995-1996), with the tax repealed effective July 1, 2000, with a corresponding reduction in general fund revenue of $4.6 million in Fiscal Year 1996 and $27.6 million after 6 years.

Senate: Phases out the soft drinks tax in increments of one-sixth beginning in Fiscal Year 1997 (July 1, 996 through June 30, 1997) and repealing the tax effective July 1, 2001, with the result being no reduction in general fund revenue in Fiscal Year 1996 and a $4.6 million reduction beginning in Fiscal Year 1997, with the reduction increasing by $4.6 million annually until the tax is phased out. Also creates an 8-member joint committee (consisting of 4 House members and 4 Senators) to review the structure, applicability, operation and exemptions of all sales, use and excise taxes, with the committee required to report its findings to the General Assembly no later than March 31, 1996.

(8) Video Poker Operations

House: No provisions in bill specifically addressing this matter, although last week the House did approve S. 687, a joint resolution to approve video poker regulations, with these regulations setting forth certain definitions (such as "single place or premise" and "measurement of distance") pertaining to video poker operations.

Senate: Prohibits the licensure and possession of video poker machines in counties where not approved by referendum; allows licensure of "video slot" machines; increases the biennial license fee to $4,000 for the first 5 machines (with the fee being $9,000 for the sixth machine, $12,000 for the seventh machine and $17,000 for the eighth machine). The proviso also requires each multi-player station to be licensed as a separate machine; delays installation of "black box" monitoring devices until July 1998 and requires written quarterly reports for each permit; permits operation of video poker machines until 2 am Sunday and allows unlimited cash payouts.

(9) Mandatory Vehicle Safety Inspections

House: Repeals the mandatory vehicle inspection law as of July 1, 1995, with repeal of this law leading to an estimated reduction in general fund revenue of $1,558,000. (The House had passed a bill during the 1993-1994 session to repeal these vehicle safety inspection requirements, but the bill subsequently died in the Senate.)

Senate: Also repeals the vehicle inspection requirement, but also, unlike the House version, requires all vehicles to be in good working order and in a safe mechanical condition.

(10) Confederate Flag

House: No provision in the budget on this matter; however, earlier this year, the House passed H. 3816, which requires flags, banners, etc. removed from the State House during the upcoming renovation project to be returned to their original location once the building is reoccupied, and once the flags, etc. are returned to their original location following completion of renovations, their location may not be changed unless approved by an act of the General Assembly. (H. 3816 currently is pending in the Senate Judiciary Committee.)

Senate: Adds a permanent law requiring flags, banners, etc. in or on the State House on May 1, 1995 and which may be removed from that building during upcoming renovations to be returned to their original location following reoccupation of that building, and once those items are returned to their original location following the renovations, their location may not be changed unless approved by an act of the General Assembly.

(11) State Employee Pay

House: $33 million for an average 1-time bonus of 3 percent, based on merit and capped at $900 per employee;

Senate: $47 million for a 2.5 percent base pay increase and an 0.5 to 1.5 percent additional increase depending on years of service.

(12) Minute of Silence in Schools

House: Includes a temporary proviso requiring local school districts receiving funding under the general appropriation bill to provide for a minute of mandatory silence at the beginning of each school day or else face loss of funding from state budget. (During the 1993-1994 session, the House passed a separate bill requiring schools to observe a minute of mandatory silence at the beginning of each school day, but this bill died in the Senate Education Committee; however, in developing the 1994-1995 state budget, both chambers agreed to insert a temporary proviso requiring schools to observe this daily minute of silence.)

Senate: Adds a permanent law requiring public schools to provide for a minute of mandatory silence at the beginning of each school day.

Bills Introduced

The following bills were introduced in the House last week. Not all bills introduced in the House are featured here. The bill summaries are arranged according to the committee to which the legislation was referred.

JUDICIARY

Qualifications of Interpreters for Deaf in Court Proceedings **(H. 4197, Rep. Walker).** Current law requires the court to appoint a qualified interpreter when a deaf person is a party or witness to a legal proceeding or is confined to an institution. This bill provides that an interpreter is to be appointed when the deaf person is party to any civil or criminal proceeding, with such proceedings including but not limited to a Family Court proceeding, action involving a traffic violation, or other infraction heard in Magistrate's Court. The bill also defines several terms for this act, as follows:

(A) "Qualified interpreter" means a person age 18 or older who has (1) been certified by the National Registry of Interpreters for the Deaf, and (2) received approval from the commission on the deaf and hearing impaired or its designee and is not a family member of the deaf person.

(B) "Deaf person" is one with a hearing loss so great as to prevent him from understanding language spoken in a normal tone.

The bill also requires that when there is an action where the mental condition of a deaf person is being considered and where the person may be committed to a mental institution, then all court proceedings pertaining to that person must be interpreted to him in a language he understands by a qualified interpreter appointed by the court.

Endorsement and Execution of Warrants by Magistrates **(S. 560, Sen. Alexander).** This bill, a companion bill to H. 3661 (currently pending in the Senate Judiciary Committee), allows a municipal law enforcement officer to serve a warrant on a person presently incarcerated in a jail or detention center of the county where the municipality is located without being required to obtain the county magistrate's endorsement of the warrant, if the following conditions are met:

(1) the warrant is issued by a "proper judicial officer" (e.g., mayor, recorder or judge) of the municipality;

(2) the warrant requires the arrest of a person charged with violating a municipal ordinance or a state statute within the trial jurisdiction of the municipal authorities; and

(3) assistance in serving the warrant is provided by the law enforcement officials of the county operating the jail or detention center.

Candidate Filing Requirements (S. 771, Sen. Holland). Under current South Carolina law, candidates seeking to run in the general election must file a statement of intention of candidacy, with this statement required to be filed between noon, March 16 and noon, March 30 (in the election year) if the candidate is seeking nomination for the General Assembly, a countywide or a less than countywide office, and between noon, April 16 and noon, April 30 if seeking nomination for a statewide, congressional, or district office including more than 1 county. This bill would require the statement of intention of candidacy for all candidates seeking to run in the general election (i.e., regardless of the office) to be filed between March 16 and March 30 (noon of both days), and would delete provisions requiring candidates seeking nomination by petition (to run in the general election) to file such statement of intention. Also, county executive committees, currently charged with accepting filings of statements of intentions of candidates for the General Assembly, are required to transmit these statements within 5 days of receipt (along with filing fees) to the respective State Executive Committees, with all county committees required to report all filings to the respective state party executive committees by 5 pm of March 30.

The bill also changes from noon, April 30, to that same time on March 30 the deadline by which candidates seeking a political party nomination (again, for the general election) for any state office, Congress or solicitor must file with the treasurer of their respective state party committees a pledge to abide by his party's primary results. Additionally, the current May 1 at noon deadline for certifying names of candidates to be on party primary ballots is moved up to noon, April 9. Finally, the bill changes the filing period for candidates seeking nomination by petition in special elections, so that this filing period, currently beginning the 3rd Friday after the vacancy and ending 10 days later, instead would begin at noon on the 11th Tuesday after the vacancy occurs and ending 7 days later also at noon.

Removal and Tabulation of Absentee Ballots (S. 772, Sen. Holland). This bill allows poll managers to begin removing absentee ballots from certain envelopes (i.e., marked "ballot herein") after examining the return-addressed envelopes at 2 pm, and further provides that tabulating and reporting of absentee ballots may not begin until the polls have closed.

LABOR, COMMERCE AND INDUSTRY

Qualifications for Applicants Desiring To Operate a Private Detective Business (S. 507, Sen. Wilson). Current South Carolina law requires any person seeking to operate a private detective business in South Carolina to register with SLED (State Law Enforcement Division), with SLED allowed to

register a person who has not been convicted of a felony or a crime involving moral turpitude, and who has not committed an act of dishonesty or fraud. This bill would delete this registration requirement and instead require any person or corporation seeking to engage in that business to obtain a Private Detective Business License from SLED. This license may be granted by SLED to a person or head of corporation who files a verified application and who meets the following requirements: (1) obtainment of a high school diploma or its equivalent; (2) is at least age 21; (3) is a U.S. citizen; (4) has not been convicted of a felony or a crime involving moral turpitude [even if pardoned for the disqualifying offense]; (5) if having a record of mental illness, has been restored to legal capacity; (6) is not a veteran who received less than an honorable military discharge; and (7) has had at least 3 years' experience as a private investigator; with a licensed private investigative agency; as a staff legal investigator; or as an investigator with a federal, state, county or municipal law enforcement agency. A private detective employed by a Private Detective Business license holder also must meet the same qualification requirements listed above in (1) through (7), with the following exceptions:

{1} a private detective must be at least age 18 (as opposed to the age 21 requirement imposed in this bill on persons seeking licensure as a private detective business);

{2} a private detective is not required to meet the experience requirements (i.e., 3 years experience as an investigator, etc.)

A person registered as a private detective before S. 507 becomes law and who applies for the private detective business license is not required to meet the 7 conditions listed in the above paragraph (i.e., age, experience, etc.)

The application requirements for licensure as a private detective business are the same as those currently in place for application for registration (e.g, residences and employment within the past 5 years, present occupation, etc.)

WITHOUT REFERENCE

Reporting of Certain Financial Information by Medical Schools Receiving State Appropriations (S. 611, Sen. McConnell). This bill requires, not later than August 1 of each year, each medical school receiving an appropriation from the State to provide to the General Assembly a written report detailing the following:

(1) for the prior fiscal year, the total compensation paid or accrued by the medical school and its affiliates (including cash, fringe benefits, retirement accounts, etc.) from all sources to or for each officer, dean and department chairman, along with each of the 50 most highly compensated physicians employed by or utilizing the facilities of the medical school or its affiliates; and

(2) a description and the source of each element of the compensation.

For purposes of these provisions, an "affiliate" is an entity controlled by or under common control with another entity (whether through ownership, charter, etc.) and including each professional staff office or practice of each medical school receiving a State appropriation, along with each trust or foundation which has as one of its significant purposes the support of a medical school receiving such appropriations.

With just over 2 weeks left in the 1995 legislative session, the Update continues to monitor the status of various pieces of legislation either pending before the General Assembly or signed into law.

(1) LEGISLATION PASSED BY THE GENERAL ASSEMBLY
(as of Monday, May 15)

The following legislation has been approved by the General Assembly this year and either signed into law, ratified as an act, or enrolled for ratification:

Supplemental Appropriations (H. 3361, House Ways and Means Committee). This joint resolution appropriates nearly $38.8 million in supplemental appropriations from Fiscal Year 1993-1994 surplus revenues, as follows:

(1) Budget and Control Board, Div. of Operations.....$17,000,000
(for Statehouse renovations)
(2) Coordinating Council for Economic Development.....4,700,000
(for economic development projects)
(3) Technical Education Commission.....3,775,731
(for special schools)
(4) Guardian Ad Litem.....200,000
(operating)
(5) Forestry Commission (for firefighting equipment)....4,600,000
(6) Department of Corrections (Ridgeland Institution)...3,129,908
(7) Clemson-PSA (Garrison Livestock Arena).....1,900,000
(8) John de la Howe School (sewer repairs).....425,000
(9) Higher Education Formula.....2,756,993
(10) University of Charleston.....300,000
(for Center for Entrepreneurship)

The joint resolution also provides that the Clerk of the House, Clerk of the Senate, and director of the Division of Operations of the Budget and Control Board (or their respective designees) must act as agents of the State House Committee and are responsible for administration and implementation of the State House renovation project. Changes or modifications to the project that would constitute a substantive modification of the overall project, as approved by the State House Committee, must be considered and approved by that committee. These clerks and the director are granted authority to approve the expenditure of funds appropriated in this resolution for the renovation, or other funds appropriated or available for the renovation, and to manage and make all necessary decisions that may arise with regard to aspects of the project, such as hiring and supervision of consultants or other personnel responsible

for all aspects of this project. These 2 clerks also have responsibility for decisions relating to the renovations and upfitting in any areas of the State House currently utilized by their respective bodies, if those renovations or upfittings do not constitute substantive modifications to the overall project.

This joint resolution also authorizes the Budget and Control Board to expend not more than $1.5 million of the funds appropriated in this resolution to the Coordinating Council for Economic Development, with the funds expended by the Board in support of (1) any South Carolina military facility or activity identified as being at risk of closure by the Base Closure and Realignment Commission and/or (2) any other federal facility for which the reduction in forces or activities will result in the loss of at least 3,500 jobs as projected or announced by the federal government. These expenditures must be made in consultation with the leadership of the affected local community, with not more than $500,000 to be used in support of any single activity or entity.

Status: Signed into law on April 21, 1995.

Enterprise Zone Act of 1995 (H. 3534, Rep. Wilkins). This act grants a number of tax incentives for businesses to locate in rural and economically depressed areas. Under these provisions, the Budget and Control Board designates enterprise zones every year, with an enterprise zone consisting of any of the following:

(1) a census tract in which either the median household income is 80 percent or less of the state average or at least 20 percent of households live below the poverty level;

(2) a county classified as "less developed" pursuant to the Jobs Credit Act;

(3) a federal military base or installation at which employment has been reduced by at least 3,000 jobs since December 31, 1990;

(4) a census tract in which at least 50 percent of the employment is in textile or apparel jobs;

(5) a census tract in which a manufacturing facility has closed, resulting in job losses of at least 25 percent of the workforce; or

(6) a census tract, any part of which is within 20 miles of a federal facility which has reduced its civilian workforce by at least 3,000 jobs since December 31, 1990.

A "qualified business" in an enterprise zone must qualify for the Jobs Tax Credit Act; provide health care benefits to full time employees; and enter into a revitalization agreement with the Coordinating Council for Economic Development. The council must certify that the incentives are appropriate for the project and that the project's total benefits do not exceed the costs to the public.

The act provides a number of tax incentives for businesses. First of all, if at least 51 percent of the full time employees hired for the project

either (1) reside in an enterprise zone at the time of employment, (2) have a household income that is 80 percent or less of the median household income for the county prior to employment, or (3) have been a recipient of AFDC payments within the past 12 months, then the business is entitled to the maximum Corporate Income Jobs Tax Credit of $1,000. Furthermore, the business is entitled to an additional $500 per year tax credit in the third, fourth and fifth year of any AFDC recipient's continued employment with the business. Secondly, the business is eligible to negotiate for fee-in-lieu property tax advantages if the business meets one-half the requirements of the fee-in-lieu statute. Businesses also are eligible to use special source revenue bonds under the Fee-in-Lieu Act.

The act permits qualifying businesses to collect Job Development fees by retaining certain employee withholdings. In order to collect the fee, the business must enter into a revitalization agreement which allows such withholdings, and the funds must be held in an escrow account with a bank insured by the FDIC (Federal Deposit Insurance Corporation). Employers may use the withheld amounts for any of the following purposes: (1) training costs and facilities; (2) acquisition and improvement of real estate; (3) improvements to both public and private utility systems (including water, sewer, electricity and telecommunications); (4) fixed transportation facilities (including highway, rail, water and air; and (5) construction and improvements for the purpose of complying with environmental laws. If a qualifying business does not achieve the level of capital investment or employment set forth in the revitalization agreement, then the Department of Revenue and Taxation may terminate the agreement and reduce or suspend all or any part of the incentives until the time the levels are met.

H. 3534 also creates "economic impact zones," which provide tax exemptions and tax credits for individuals and corporations as incentives to invest in areas affected by military base closures or realignments. Once an area is designated by the Budget and Control Board, the economic impact zone remains in effect for 15 years, unless shortened by the General Assembly.

As for the main benefits for these zones, the bill allows up to 20 percent of cash paid for Economic Impact Zone Stock Companies to be deducted against South Carolina taxable income, with a maximum deduction of up to $10,000, not to exceed a cumulative $100,000, with the deduction allowed to be carried forward. Companies must meet the following criteria to qualify for that benefit:

(1) be worth no more than $5 million (small companies)
(2) be an active trade or business
(3) one-third (1/3) of its employees must reside in the zone
(4) the company must use the revenue from stock in the zone within 12 months.

A 5 percent credit is allowed on all economic impact zone qualified manufacturing and productive equipment properties placed in service within

the zone in the tax year (tangible personal property including software but excluding buildings and property).

The act also gives the Department of Revenue and Taxation flexibility to make the apportionment system fair to the taxpaying business of the state, and provides special case apportionment if the Advisory Coordinating Council for Economic Development certifies that a new facility or expansion will have a significant impact on the region for which it is planned and the public benefit will exceed the costs to the public.

Status: Signed into law on April 4, 1995.

Increased Penalties for Transporting Child Out of State with Intent To Violate Custody Order (S. 316, Sen. Courtney). South Carolina law provides that when a court awards custody of child under age 16, it is a felony for a person with intent to violate the court order to transport or cause to be transported the child from South Carolina to another state, or to keep that child outside this State. However, the person is guilty only of a misdemeanor if he returns the child to the jurisdiction of the court issuing the order within 7 days after removing the child from this State. Prior to passage of S. 316, a person convicted of this crime could be fined at the discretion of the court and/or imprisoned not more than 3 years, with there being no distinction in punishment set for felony and misdemeanor violations. With passage of S. 316, however, the maximum imprisonment which may be imposed on a person convicted of this offense when a felony increases from 3 years to 5 years, while the maximum imprisonment imposed for a misdemeanor violation is set at 3 years. Under this act, the court would still retain the option to fine persons convicted of violating these provisions and to both fine and imprison offenders (with the amount of the fine imposed remaining at the court's discretion).

Status: Signed into law on April 10, 1995.

Motor Vehicle Damage Disclosure Act (H. 3552, Rep. Jennings). This act requires motor vehicle manufacturers and dealers to disclose in certain instances damages to new motor vehicles. Under these provisions, a motor vehicle manufacturer must disclose in writing to a motor vehicle dealer at time of delivery of a new vehicle any damages or repairs to the new vehicle which occurred while it was in possession or under control of the manufacturer. This disclosure requirement, however, is applicable only if the damage exceeds 3 percent of the manufacturer's suggested retail price, as calculated at the rate of the dealer's authorized warranty rate for labor and parts; furthermore, the manufacturer is not required to disclose to the dealer that the glass, tires, bumper or in-dash equipment of or in the vehicle was damaged if the damaged item was replaced with original or comparable new equipment. The dealer also must disclose this information in writing to a purchaser of a new vehicle before entering into a sales contract, under these same conditions in which manufacturers must disclose

this information to dealers (e.g., damage exceeds 3 percent of retail price, etc.). If disclosure of damages or repairs is not required under this act, then a purchaser cannot revoke or rescind a sales contract or bring a civil action solely on the fact that the new vehicle was damaged and repaired before completion of the sale. For purposes of this act, "manufacturer's suggested retail price" is the retail price of the new vehicle suggested by the manufacturer, including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new vehicle at the time of delivery to the dealer.

Status: Ratified on May 11, 1995.

Optional Methods for Financing New Road Construction **(H. 3666, House Education and Public Works Committee).** This act provides an alternative method for financing new roads, bridges and other transportation-related improvements, allowing counties to impose an additional sales tax or tolls for these purposes. These optional financing methods supplement already existing methods, such as the State Highway Bond Act and State Turnpike Bond Act, for financing highway and bridge projects.

Under these provisions, for purposes of making road improvements and the like, each county may by ordinance establish a transportation authority, whose board has all the rights and powers of a public body (such as acquisition and disposal of property, exercise of eminent domain, borrowing money and issuing notes). Members of the authority board must be appointed by the county governing body, except that if a county enters into am arrangement with one or more governmental entities and the parties choose to form an authority for such purpose, then these other entities also must be represented on the board. A county may enter into an authority or other intergovernmental agreement with other counties only if approved in referendums in each of the participating counties.

In order to fund these improvements, counties may impose either an additional one percent sales and use tax or may impose tolls on the transportation project; however, counties may not impose both at the same time. If an additional tax is sought, the county governing board may pass an ordinance imposing that, subject to approval in a public referendum. The ordinance must specify the project for which the tax proceeds are to be used, which may include projects located inside and/or outside the county; the maximum time (not exceeding 25 years or the length of payment for the project, whichever is shorter) for which the tax may be imposed, and the estimated capital cost of the project to be funded in whole or in part from the tax proceeds and the principal amount of bonds to be supported by the tax. Upon receipt of the ordinance, the county election commission must conduct a referendum on imposition of this tax. The referendum also must include a question on authorization of general obligation bonds, so that revenues from the tax may be pledged to repay the bonds. With voter approval, the county may issue bonds to fund the project's expenses, and if the additional tax wins voter approval, then the tax is effective the first

day of the month occurring 180 days after the date of the referendum. This additional tax would not apply to items (such as motor vehicles) subject to the $300 sales tax cap nor to food purchased with USDA food stamps. Revenues from this additional tax must be remitted to the State Treasurer, credited to a separate fund and distributed, with any earned interest, quarterly to the county where the tax is imposed. The tax terminates at the earlier of the following two events: (1) the final day of the maximum time specified for imposition of the tax, or (2) the end of the calendar month during which the Department of Revenue and Taxation determines that the tax has raised sufficient revenues to fund the cost of the project(s) or the cost to amortize debts related to the projects.

If wishing to fund a project via tolls, the county governing body may pass an ordinance allowing (subject to public referendum) an authority to impose tolls for transportation improvements. The ordinance must specify the purpose for which the toll revenues are to be used; the maximum time (not exceeding 25 years) for which the tolls may be imposed, and the maximum cost of the project or facilities to be funded in whole or part by toll revenues and the principal amount of bonds to be supported by the tolls. The county election commission must conduct a referendum on imposing the tolls on the first Tuesday occurring 60 days after the commission receives the ordinance. When tolls are imposed for more than 1 purpose, the jurisdiction's governing body that authorized the referendum must determine the priority for expenditure of the tolls' net proceeds. These tolls terminate on the earlier of (1) the maximum time specified for the imposition, or (2) the end of the calendar month during which the authority determines that the tolls have raised sufficient revenues to fund the cost of the project(s) or the cost to amortize all debts related to the projects. If tolls are approved by referendum and the authority enters into a contractual agreement with the Department of Transportation relating to transportation authorities, then the authority may construct, operate, etc. designated highways, bridges and other such improvements as "turnpike facilities," as part of the state highway system or any federal aid system when it is determined that actual or potential traffic conditions justify these facilities. Under this partnership agreement, the authority may use funds available for maintenance of the state highway system for maintenance of a turnpike facility financed pursuant to this act. In designating, constructing, etc. turnpike facilities, the authority can exercise such authorizations as generally are granted to the Department of Transportation by statutory law. The authority may issue toll revenue bonds in a principal amount not exceeding the amount authorized in the referendum to allow the authority to impose tolls to fund all or a portion of the cost of these facilities, and maintenance of the toll road, following its adoption of a resolution setting forth certain information (such as the toll facility proposed to be constructed, a table showing estimated annual principal and interest requirements for the proposed toll revenue bonds, etc.). Additionally, in connection with these toll facilities, the authority, among other things, may revise and collect the tolls for transit over each turnpike facility constructed by it and control access to these facilities.

The act also requires any county which has previously imposed a local option sales and use tax and which opts to hold a referendum on an additional sales tax for transportation improvements to simultaneously hold a referendum as to whether the local option sales and use tax should continue in effect. If voters opt not to continue that local option tax, then that tax must terminate in the first day of the first fiscal year following the referendum.

Additionally, the act prohibits the Department of Transportation from (1) designating as a turnpike facility any highway, bridge or other transportation facility funded wholly or partially by this act's local option sales and use tax, and (2) reducing funds available to a municipality, county or multi-county area because the respective entity has funded a transportation improvement through its local option tax or tolls as approved by local referendum.

The act amends state law pertaining to administration of tolls on projects by the Department of Transportation so as to provide that a toll project in excess of $150 million may only be initiated through this local option sales tax or toll.

Status: Ratified on May 11, 1995.

Senate Reapportionment Plan **(S. 9, Sen. Holland).** This measure has been offered in response to the federal court order two years ago that the chamber draw up new district lines. Population of the Senate districts is based on 1990 U.S. Census information, with the average district having a population of 75,800. Tables listing the population of these Senate districts were published in last week's Update (see pages 4-12 of the May 9 Update); the House made no substantive changes to this bill, although the Senate the following day made minor adjustments in the boundaries of Senate Districts 15 and 16 in and around York County and to Districts 32, 37 and 44 in and around Charleston. Under S. 9, 11 of the 46 Senate districts include a black voting age population percentage exceeding 50 percent (i.e., a majority of persons 18 or older is black in those 11 districts). If signed by the governor and approved by the U.S. Justice Department, the provisions of S. 9 would be effective through the year 2000, after which time new district boundaries for the following 10 years (2001-2010) would be drawn.

Status: Ratified on May 11, 1995.

Students Caught Bringing Firearms to School Must Be Expelled **(S. 482, Sen. Reese).** This act requires a school district board of trustees to expel for at least 1 year any student determined to have brought a firearm to school or any setting under the jurisdiction of the local board. This 1 year expulsion is subject to modification by the district superintendent of education on a case-by-case basis, and students expelled pursuant to these provisions are not precluded from receiving educational services in an

alternative setting. The act also requires the local board to establish a policy requiring the student to be referred to the local county office of the Department of Juvenile Justice or its representative.

Status: Ratified on May 11, 1995.

Lease Purchase or Financing Agreements Subject to Constitutional 8 Percent Debt Limit (S. 48, Sen. Leatherman). This act prohibits the State's political subdivisions (municipalities, counties, school districts, etc.) from entering into a financial agreement (other than an enterprise financing agreement, a lease purchase contract for energy efficiency products, or a guaranteed energy savings contract) if the principal amount of the financing agreement, when added to the principal amount of limited bonded indebtedness outstanding on the date of execution of the financing agreement, exceeds 8 percent of the assessed value of taxable property of the subdivision. However, this 8 percent limit may be exceeded upon approval of the financial agreement by a majority of the entity's voters in a referendum. Furthermore, if an entity has outstanding any financing agreement (other than an enterprise financing agreement) on the date of issuance of any limited bonded indebtedness pursuant to any bond act, then the amount of this limited indebtedness, plus the amount of the entity's other limited bonded indebtedness (when added to the principal balance under the entity's financial agreement[s]) cannot exceed the entity's constitutional debt limit except upon a favorable vote by referendum of the entity's voters. The act also provides that a payment made by the State pursuant to a financial agreement is deemed general obligation debt subject to the South Carolina Constitution's debt service limitation.

For purposes of this act, a "financing agreement" is a contract entered into after 1995 under the terms of which:

(1) a governmental entity acquires use of an asset which provides for payments to be made in more than one fiscal year;

(2) that payments thereunder are divided into principal and interest components or which contain reference to any portion of any payment under the agreement being financed as interest; and

(3) that title to the asset will be in the name of or be transferred to the governmental entity if payments scheduled or provided for in the financing agreement are made (though this term excludes contracts entered into in connection with issues of general obligation or revenue bonds pursuant to the State Constitution's debt limit).

An "enterprise financing agreement" is one entered into to provide an asset for a governmental enterprise, revenues from which are expected to be sufficient to pay amounts due under the agreement.

Status: Enrolled for Ratification.

(2) LEGISLATION PASSED BY THE HOUSE
(as of Monday, May 15)

The following bills have been approved by the House this session and currently are pending in the Senate, whether in committee or on that chamber's calendar, or have been approved by the Senate in a different version.

Organ and Tissue Donor Program **(H. 3023, Rep. Byrd).** This bill establishes the Gift of Life Trust fund, an eleemosynary corporation which must provide organ and tissue education, such as public campaigns and provision of financial assistance to transplant recipients who have exhausted all other means of assistance available to procure anti-injection medications. This trust fund would accept gifts, bequests and grants from individuals, foundations and other sources and would supplement, but not replace, services provided by state agencies. The fund is administered by a 9-member board of directors, appointed to 4-year terms by the governor, to include members representing organ, tissue and eye recipients and their families, a forsenic pathologist, and one representatives each from a South Carolina certified organ procurement organization, a South Carolina tissue procurement organization, and a South Carolina eye bank. The board may employ a director and other staff as necessary to carry out these provisions, although administrative costs may not exceed 20 percent of the total funds credited to the trust fund. In carrying out its duties, the board must develop and implement organ and tissue donation, educational programs, and campaigns; make policy recommendations for promotion of organ and tissue donations; and evaluate applications for and award financial assistance to organ and tissue recipients for anti-rejection medications.

Except for administrative fees paid to the Department of Revenue and Taxation, funds credited to this trust fund may only be used for the following purposes:

(1) administrative purposes;

(2) development and promotion, in cooperation with the South Carolina Donor Network, organ and tissue public awareness educational programs;

(3) incorporating organ and tissue donation into the medical school curriculums of the Medical University of South Carolina and the USC School of Medicine;

(4) financial assistance to transplant recipients who have exhausted all means available to cover the cost of the recipient's anti-rejection medications; however, no funds may be paid directly to the recipient, funds expended for this purpose cannot exceed 35 percent of the funds received by the trust fund that year, and the recipient seeking assistance must be referred to this fund by his transplant center, attending physician, local physician, nurse coordinator, or social worker; or

(5) a reserve fund in an interest bearing account, with 5 percent of the funds received by the trust fund placed annually in this account, and no withdrawals permitted from this account until the minimum balance is $100,000, at which time these funds are only to be used in years when donations do not meet the average normal operating cost incurred by the trust fund and funds are needed to meet expenses.

The bill also allows donations to this trust fund to be made when persons file their income tax returns, with the donation not changing the person's tax liability (in other words, the donation would be made by reducing the person's tax refund or by requiring him to designate extra money for the fund, in addition to that which is due on his tax.) Furthermore, an applicant for a new or renewal driver's license, identification card, vehicle title or license plate may contribute $1 to the Trust Fund while engaged in any of these activities, with the $1 fee added to the cost of the item purchased.

Status: Approved by the House on April 21, 1995; amended and given second reading in the Senate on May 11.

"Vulnerable" Adults Cannot be Considered Abused or Neglected if Furnished Nonmedical Remedial Treatment through Spiritual Means (H. 3185, Rep. P. Harris). As approved by the House, this legislation states that a vulnerable adult cannot be considered abused or neglected for the sole reason that, in lieu of medical treatment, he is being furnished non-medical remedial treatment by spiritual means through prayer alone, which he has practiced in accordance with the tenets and practice of a recognized church or religious denomination. (The Senate amended the bill to provide that the vulnerable adult cannot be considered abused or neglected if he is furnished non-medical remedial treatment through prayer which he has practiced freely "in accordance with his religion", as opposed to the House version of practice "in accordance with...a recognized church or religious denomination.)

Status: Approved by the House on March 17, 1995; approved, with an amendment, by the Senate on May 11, 1995.

Truth-in-Sentencing (H. 3238, Judiciary Committee). This bill is designed to enact sentencing reform which would provide more uniformity and predictability in sentencing. As of last year, approximately one-third of all states had adopted some form of "truth in sentencing" legislation, with neighboring North Carolina being the most recent state to do so.

Under the House-approved version of H. 3238, a prisoner is not eligible for work release until he has served at least 80 percent of the actual term of imprisonment (if convicted of a violent crime) or at least 60 percent of the actual term of imprisonment if convicted of a non-violent crime. These percentages must be calculated without the application of

earned work credits, education credits and good time credits, and the percentages are to be applied to the actual term of imprisonment, not to include the portion of the sentence which had been suspended. If, during the term of imprisonment, a prisoner commits an offense or violates one of the institution's rules, then all or a part of the credits can be forfeited at the discretion of the director of the Department of Corrections. These provisions on work release, however, do not apply to prisoners serving in a local correctional facility.

The bill also prohibits a prisoner from being eligible for early release, discharge or community supervision until he has served 85 percent of the actual term of imprisonment imposed (if convicted of a violent crime), or 70 percent of the actual term of imprisonment (if convicted of a non-violent crime). These percentages must be calculated without application of earned work credits, education credits, and good time credits. These percentages also must be applied to the actual term of imprisonment, not to include the portion of the sentence which has been suspended. If, during the term of imprisonment, a prisoner commits an offense or violates one of the institution's rules, all or a part of the credits can be forfeited at the discretion of the director of the Department of Corrections. These early release provisions do not apply to prisoners serving time in a local correctional facility.

The bill prohibits parole from being granted to any person who commits a crime after June of 1996; however, the Board of Pardons retains its duties in relation to parole for crimes committed prior to July of 1996. A two-thirds majority of the full board would be required to grant parole to a violent offender, except that the board could grant parole to an offender who committed a violent crime prior to June 3, 1986 by a majority vote. The board also could grant parole to nonviolent offenders by a unanimous vote of a 3-member panel or by a majority vote of the full board.

Also under these provisions, inmates under the supervision of the Department of Corrections and who are not considered a safety risk may be utilized by a municipality, county, school district or 501 (c)(3) charity for purposes of construction, repair or maintenance service. The value of the inmates' construction services, however, cannot exceed the limit allowable for unlicensed contractors pursuant to the State's Contractors Licensing Law, and any improvements of a structural, electrical and mechanical nature must be designed, inspected and approved by a qualified professional engineer or a licensed commercial inspector and must comply with applicable building codes. For purposes of utilization of inmates for these purposes, inmates convicted of a crime involving sexual battery or assault with intent to commit criminal sexual conduct are considered a safety risk (with the Department retaining jurisdiction to determine other categories of offenses which it deems to be a safety risk).

All sentences pronounced in General Sessions Court involving incarceration for a term exceeding 1 year for a crime committed after June 1996 must include the incarceration period and up to 2 years of continuous

community supervision. For crimes involving sentences of 1 year or less, the sentencing judge retains the discretion to include a requirement of completion of a community supervision program. This program is operated by the Department of Probation and Community Supervision and lasts no more than 2 years. Pursuant to recommendations of the probation agent, the court must determine when a prisoner fails to complete this program or when supervision should be revoked. If the court revokes community supervision, the prisoner must be returned to jail for up to a year and then be recycled through community supervision until that supervision is successfully completed. Each prisoner must successfully complete the program before release from the criminal justice system and the sentence is satisfied. The Department of Probation and Community Supervision must notify registered victims of the place where the prisoner is to be released on the community supervision program. Each adult placed on probation or community supervision must pay a regular supervision fee toward offsetting the cost of his supervision for so long as he remains under supervision. This fee is determined by the Department of Probation and Community Supervision based on the person's ability to pay and must range between $20 and $100 per month, with a delinquency of 2 months or more in payment of the fee during the supervision period serving as a condition for revocation of community supervision. Inmates who successfully complete a shock incarceration program also must be released on community supervision for a period of 2 continuous years.

The bill substitutes the Department of "Probation and Community Supervision" for the Department of "Probation, Parole and Pardon Service," while also changing the Board of Probation, Parole and Pardon Services to the Board of Pardons.

H. 3238 also revises sentencing options for murder, such that those options would be the death penalty, life imprisonment, and a mandatory minimum sentence of 30 years. In death penalty cases where the jury finds an aggravating circumstance but makes no recommendation for the death penalty, the court must impose life imprisonment. In death penalty cases where an aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment; if no aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum sentence of 30 years. For purposes of these sentences, "life imprisonment" is to be taken literally (i.e., imprisonment until death).

Offenders convicted of a third time of a violent crime must be sentenced to life imprisonment (i.e., until death).

The bill also amends good time credits (used to reduce time served in a facility), such that these credits are to be received and computed at the rate of 3 days for every month served, with no person entitled to a reduction in sentence below that specified in this bill (in other words, credits cannot be used to allow a person convicted of a violent crime to serve less than 85 percent of his sentence, or under 70 percent if convicted

of a non-violent crime), and these credits earned cannot be applied to prevent full participation in the prerelease and community supervision program. Provisions pertaining to work and academic credits are revised to allow for both to be received and computed at the rate of 6 days total for every month an inmate is employed or enrolled, with the maximum annual credit limited to 72 days. These work and academic credits may not be applied in a manner which would prevent full participation in the Department's prerelease and community supervision program.

The bill also requires appointment of a committee of legislators and the Attorney General to study mandatory minimum sentences and alternative sentences for non-violent offenders, along with examination of anti-recidivism methods for first-time non-violent offenders. The committee to report to the General Assembly no later than January 9, 1996 (first day of next year's legislative session).

Status: Approved by the House on January 19, 1995; currently pending on the Senate second reading contested calendar.

Term Limitations **(H. 3281, Judiciary Committee).** This proposed constitutional amendment would limit members of the General Assembly and state constitutional officers (Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General, Commissioner of Agriculture and Adjutant General) to a maximum of 12 years in office in their respective post. Under these provisions, representatives may serve no more than 6 complete terms, while senators and state constitutional officers are limited to 3 complete terms. This 12-year limitation applies whether the service in the particular office is consecutive or non-consecutive (i.e., a lifetime limit). These term limitations would be retroactive to the 1994 general election for representatives and state constitutional officers and would apply to senators beginning with the 1996 general election. Service prior to the 1994 general election (for representatives and constitutional officers) and the 1996 general election (for senators) would not count toward this term limitation; for example, a representative with 8 years' service in the House at the time of the 1994 general election would still be able to serve another 12 years in office.

Status: Approved by the House on February 9, 1995; currently pending in the Senate Judiciary Committee.

1995-1996 General Appropriation Bill **(H. 3362, Ways and Means Committee).** This is the proposed $4.1 billion state budget for the upcoming fiscal year (July 1, 1995 through June 30, 1996). As approved by the House in mid-March, the budget, among other things, included $129 million in property tax relief for owner-occupied homes (with other $55 million provided through set-asides from the Carnell-Felder Act); no tax increases; $10 million to complete the phase-in of the capital gains rate reduction for taxpayers; $10 million for the second year phase-in of an increase in the

tax exemption for families with children under age 6; establishment of a separate Property Tax Relief Fund within the State Treasury for purposes of providing property tax relief for owner-occupied residences; and abolishment of mandatory vehicle safety inspections. With regard to various subject areas, approximately $590 million (from general and supplemental funds) was appropriated for higher education; the average teacher salary was increased by 4.2 percent (to $31,749) to meet the estimated southeastern states' average; an additional $24.5 million was appropriated to criminal justice agencies; and an appropriation of $20.5 million to Corrections for operation of a new correctional institution and to annualize costs associated with facilities opening during the current fiscal year.

For more information on the House and Senate versions of H. 3362, please see pages 4-7 of this Update.

Status: Approved by the House on March 14, 1995; Approved, with amendments, by the Senate on May 5, 1995; Conference Committee of House and Senate members to resolve differences in the two budget versions was appointed on May 11, with this committee expected to begin its work on Tuesday, May 16.

Welfare Reform (H. 3613, Rep. Wilkins). Known as the "South Carolina Family Independence Act of 1995," these provisions emphasize personal and parental responsibility requirements for recipients of public assistance. The bill includes a requirement for a reciprocal agreement between recipients and the State that describes the actions the recipient must take to become employed and a timeframe for completing these actions. The agreement also must include services to be provided by the Department of Social Services (DSS) to help the recipient become employed.

The House-approved version of this bill would limit the time a recipient could receive public assistance, limiting receipt of benefits to no more than 24 months within a 120-month period (2 years out of every 10 years) and no more than 60 months (5 years) over a lifetime. Exceptions to this limitation would be made for recipients or their dependents who have disabilities; care for a child who has been abandoned by his parents; or lack of child care and transportation services needed to allow the client to participate in education and training programs. Extensions to this time limit would be allowed if the parent is under 18 and has yet to finish high school---AFDC (Aid to Families with Dependent Children) is to be provided for up to 24 months after the parent is 18 or completes high school (whichever comes first); or if the client is in a training program that will not be finished by the 24th month, benefits may be extended to a maximum of 30 months. Additionally, an extension may be granted if the AFDC recipient cannot find a job but can establish, by clear and convincing evidence, that he/she has fully complied with the recipient's agreement with DSS, including education and training; job search activities; and is willing to relocate; and DSS is satisfied that no available employment reasonably exists for the recipient; and that there are no other means of support reasonably available

to the recipient's family. Every 60 days, DSS must review the recipient's compliance, and assistance may be extended for an additional 12 months if the person is engaged in education, training or other government-related activities.

H. 3613 would prohibit a family from being granted an increase in AFDC benefits as a result of a child born to that parent 10 or more months after the family beings to receive AFDC, unless the birth is due to rape or incest. However, the State may provide benefits to a child born after 10 months in the form of vouchers that may be used only to pay for particular goods and services specified by the State, as needed for the child's mother to participate in education training and employment-related activities.

The bill includes several child support enforcement mechanisms designed to streamline paternity determination and implementation of child support orders. Under these provisions, when a child is born to parents, either or both of whom are unmarried and under age 18, DSS may pursue support from one or both of the child's maternal and paternal grandparents, as long as the parent if the child is under 18. When a noncustodial parent is 2 months in arrears on child support, any license (whether professional, hunting, fishing, driving, law enforcement or watercraft) he holds will be revoked unless, within 90 days of receiving notice that the licensee is out of compliance with the order, the licensee has paid the arrearage or has signed a consent agreement with DSS establishing a payment schedule. Additionally, the AFDC recipient must cooperate with DSS in establishing paternity or lose AFDC benefits for herself and her family.

Status: Approved by the House on March 2, 1995; approved, with amendments, by the Senate, on May 11, 1995 .

<u>Property Tax Relief</u> **(H. 3651, Rep. H. Brown).** This bill provides for implementation of residential property tax relief, with the House having approved of $184 million in such relief for the upcoming fiscal year, of which $129 million is included in the House-approved version of the budget and another $55 million is from set-asides from the Carnell-Felder act.

Under these provisions, the first phase of property tax relief must be used to phase out residential (i.e., owner-occupied residences) property taxes devoted to school operating costs. In fiscal years beginning after June of 1996, the General Assembly must appropriate one-half of estimated recurring revenue growth until residential property taxes (except for debt service and lease purchase payments) are completely phased out. Local governments must be reimbursed dollar for dollar for revenues lost because of this exemption. This tax exemption is contingent on full funding of the Education Finance Act and on a state appropriation each year reimbursing school districts by an amount equal to the school tax revenue loss resulting from the residential property tax exemption.

H. 3651 also imposes restrictions on the ability of local governments (counties, municipalities, special purpose districts, public service districts, and school districts) to raise taxes or fees. A three-fifths (3/5) vote of a local governing body is required to raise taxes or fees (excluding utilities) up to the percentage increase in the Consumer Price Index (i.e., the inflation rate), and a vote of two-thirds (2/3) of the governing body is required to raise taxes or fees above the rate of inflation (although if the governing body has fewer than 6 members, only a 3/5 vote is required to raise taxes and fees above the inflation rate). Taxes may be raised without either the 3/5 or 2/3 supermajority requirement in the following cases: {1} in response to a natural or environmental disaster as declared by the governor; {2} to offset a prior year's deficit, or a deficit in providing a service or function which is funded through imposition of fees; {3} to raise revenue necessary to comply with judicial mandates requiring use of local funds; and {4} (for levying of school taxes)---to meet the minimum required Local Education Finance Act inflation factor and the per pupil maintenance of effort requirement. The bill also requires a two-thirds (2/3) vote of the governing body to impose new taxes or fees for operating purposes. These restrictions, however, would not apply to millage levied to pay bonded indebtedness, lease-purchase agreements, or to maintain a reserve account, nor may the restrictions be construed to amend or repeal existing laws which limit the fiscal autonomy of special purpose districts, public service districts or school districts (to the extent those limitations are more restrictive than the provisions of H. 3651). Additionally, these tax restrictions would not apply to school districts in which increases in property taxes for a particular year must be approved in a district referendum. The bill also requires the approval of two-thirds of each branch of the General Assembly in order for legislators to impose a general tax increase or new general taxes.

H. 3651 requires local governments to publish notice in a newspaper concerning a public hearing on the budget for the upcoming fiscal year. The notice must include detailed information concerning the budget (e.g., proposed or estimated change in operating budgets between the current fiscal year and the proposed budget; the proposed millage for the next fiscal year; and any new fees or taxes that would affect more than 5 percent of the total proposed budget).

This bill also establishes a Joint Ad Hoc Committee on Unfunded Mandates, consisting of 9 members (3 representatives, appointed by the Speaker; 3 senators, appointed by the President of the Senate; and 3 persons appointed by the governor) to investigate and review the role of unfunded mandates and their impact on counties. The committee must report to the General Assembly with specific recommendations on repeal or modification of all unfunded mandates existing as of July 1, 1995, with the report and recommendations made to the General Assembly prior to the beginning of the 1996 legislative session.

Also under these provisions, each county or the State, once every fourth year, must appraise and equalize properties under their

jurisdictions. Upon completion of the reassessment program, the county or the State must notify each taxpayer of the change in value or classification if the change is $1,000 or more. In the fifth year, the county or the State must implement the program and assess property on the newly-appraised values.

Status: Approved by the House on March 28, 1995; recalled from the Senate Finance Committee on May 9 and currently pending on Senate calendar.

Workers' Compensation Payments (H. 3837, House Labor, Commerce and Industry Committee). The purpose of this legislation is to allow an employer to start workers' compensation payments without waiving his defenses in denying a claim after a good faith investigation and to provide a manner for terminating or suspending benefit payments upon presentation of reason.

Under these provisions, when an employee is out of work for eight consecutive days due to a work-related injury, the employer may start temporary total disability payments immediately and may continue these temporary payments for up to 120 days without waiver of any grounds for denial of claim resulting from a good faith investigation by the employer. The employer must notify the Workers Compensation Commission when the payments begin in a "timely" manner (as currently opposed to immediate notification upon making first payment), with the Commission able to provide by regulation what is deemed "timely." Once temporary total disability payments have begun, the employer may terminate or suspend these payments immediately during the 120-day period if the employee:

(1) returns to work;

(2) agrees he is able to return to work during the 120-day period and completes proper documentation stating such;

(3) has been released by the treating physician to work without restriction, compensation may be terminated immediately within the 120-day period;

(4) has been released by the treating physician to limited duty and the employer provides limited duty work consistent with the terms of this release---but if the injured worker refuses to accept the limited duty or to return to work during the 120-day period, benefits may be terminated or suspended; or

(5) refuses medical treatment or an examination or evaluation, in which case the employee is not entitled to compensation benefits during the period of the refusal and compensation may be terminated upon documenation of this refusal to the Commission and notice to the employee.

The bill allows an employee to attempt a trial return to work for a period not exceeding 3 months, and during a trial return to work period, temporary total disability compensation must be suspended. The employee must be paid any temporary partial disability compensation which may be owed. If, however, the trial return to work is unsuccessful, then the employee's right to continuing temporary total compensation must be unimpaired, although this

trial return to work may be attempted only once. An employee may request a hearing to have temporary compensation reinstituted after termination, with the Workers' Compensation Commission required to give this hearing request priority consideration over other hearing requests.

The failure of an insurance carrier or employer to comply with these provisions results in a 25 percent penalty, computed on the amount of benefits withheld. The penalty amount must be paid to the employee, in addition to the amount of the benefits withheld.

Status: Approved by the House on April 6, 1995; currently pending in the Senate Judiciary Committee.

Presumption of Disability for Loss of Use of Back **(H. 3838, House Labor, Commerce and Industry Committee).** Current law provides that for workers' compensation purposes, a person with 50 percent or more loss of use of one's back is deemed permanently and totally disabled, with the employer or carrier not allowed to argue whether the injury is a total disability. This automatic presumption often leads to claimants receiving more compensation than deserved, with benefits for permanent disability extending for 500 weeks, in comparison to only 300 weeks for under a 50 percent loss of use of back. Under this bill, however, the presumption of total and permanent disability due to a 50 percent or greater loss of use of back may be rebutted by a preponderance of evidence to the contrary.

Status: Approved by the House on April 27, 1995, currently pending in the Senate Judiciary Committee.

Dry Cleaning Facility Discharge Rehabilitation **(H. 3907, House Agriculture, Natural Resources and Environmental Affairs Committee).** This bill is designed to clean up sites contaminated by release of drycleaning solvents by drycleaning facilities, with a trust fund to be established for this purpose.

Under these provisions, a "drycleaning facility" is a commercial establishment that operates or has in the past operated (whether in whole or part) for the purpose of cleaning clothing and other fabrics using a process involving the use of drycleaning solvents. These facilities include laundry facilities that are using or have used drycleaning solvents as part of their cleaning process but do not include textile mills or uniform rental and linen supply facilities. "Drycleaning solvents" are nonaqueous solvents used in cleaning clothing and other fabrics and include perchloroethylene (also known as tetrachloroethylene) and Stoddard solvent, along with their breakdown products. "Drycleaning solvents" include only solvents originating from use at a drycleaning facility or by a wholesale supply facility. A "wholesale supply facility" is a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

The bill establishes a "Drycleaning Facility Restoration Trust Fund", administered by the Department of Health and Environmental Control (DHEC) to clean up sites contaminated by drycleaning solvents and which pose a significant threat to public health or safety. Judgments, reimbursements, loans, other fees and charges related to implementation of this act, along with various taxes and registration fees levied pursuant to this act (to be discussed shortly) must be credited to this Fund. The State accepts no financial responsibility as a result of creation of this Fund. When incidents of contamination by drycleaning solvents related to operation of drycleaning facilities or wholesale supply facilities pose a threat to the environment or to the public health, safety and welfare, DHEC then must obligate monies available in the fund to provide for prompt investigation and assessment of the contaminated sites; the expeditious treatment, restoration or replacement of potable water supplies; rehabilitation, monitoring and maintenance of contaminated sites; and payment of reasonable costs of restoring property as nearly as practicable to the conditions existing before activities associated with contamination assessment or remedial action. However, with regard to the investigation and assessment of contaminated sites, the owner or operator of a drycleaning facility or wholesale supply facility must pay the cost of the investigation and assessment up to the amount of the owner's or operator's deductible, with DHEC only providing monies that exceed the deductible. The bill lists factors which must be considered in establishing priorities for cleanup of contaminated sites and prohibits DHEC from expending more than 5 percent of the fund's average annual balance to pay costs of cleanup at any 1 eligible site.

The bill requires the owner or operator of each drycleaning facility to register the facility with DHEC by July 1, 1996 and to pay initial and annual renewal registration fees. The fee for a drycleaning facility is as follows: $750 if the facility has under 5 employees; $1,500 if it has between 5 and 10 employees; and $2,250 if it has more than 10 employees. Revenue from these registration fees must be credited to the Fund. Prior to December 1, 1996, each operator of a drycleaning facility must be certified by a nationally recognized drycleaning industry association as being competent to operate the facility according to the industry's highest standards. Additionally, before 1999, the drycleaning facility owner must install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used. Beginning July 1, 1995, an environmental surcharge must be levied on the production in South Carolina or importation into this State of perchloroehtylene and Stoddard solvent, with the surcharge being $10 per gallon on perchloroehtylene and $2 per gallon on Stoddard solvent used for drycleaning purposes. Proceeds from this surcharge also must be credited to the Drycleaning Facility Restoration Fund. Persons producing these chemicals or importing them into this State must register with the Department of Revenue and Taxation and become licensed for purposes of remitting this surcharge. Persons operating at more than 1 location are only required to have a single registration, with the registration fee being $30. A person failing to register in a timely manner is guilty of a misdemeanor, punishable upon conviction by a

fine not exceeding $1,000 or imprisonment not exceeding 30 days. The bill lists conditions under which this surcharge does not apply and authorizes the Department of Revenue and Taxation to make returns and payments when the surcharge remitted by a licensee does not exceed a certain amount within a time period.

The bill lists activities for which the fund may not be used (for example, it cannot be used to restore sites contaminated by solvents normally used in drycleaning operations if activities at a site are not related to operation of a drycleaning or wholesale supply facility) and allows DHEC to obtain (when available) an environmental liability insurance policy with a credible insurance company, with this policy's purpose being to initiate site rehabilitation where contamination from drycleaning solvents poses a significant danger to the public water supply. The policy is only to be used if the Fund is deemed to be insolvent for rehabilitation of the site. If the fund becomes insolvent, the letter of credit has been completely expended, and DHEC declares the site an emergency, then the owner or operator of the drycleaning facility is liable for the cost of that cleanup but must be reimbursed once the fund becomes solvent and the letter of credit is repaid. Furthermore, if the State Treasurer determines the fund is insolvent, then an environmental surcharge must be levied on every person engaging in laundering and drycleaning clothing and other fabrics in South Carolina, at a rate of one-half percent (0.5 percent) on all gross sales for a minimum of 1 year. However, this surcharge must be suspended once the treasurer determines the fund is solvent. To encourage participation in the fund, DHEC must establish a moratorium on its administrative and judicial actions concerning drycleaning facilities and wholesale supply facilities resulting from discharge of drycleaning solvents to the State's soil or waters, with the moratorium applying only to facilities deemed so eligible for cleanup under the fund. The bill lists conditions under which a facility is eligible and lists deductibles which eligible owners or operators of contaminated sites must pay. In order to identify drycleaning facilities and wholesale suppliers which have experienced contamination resulting from discharge of drycleaning solvents and to assure prompt rehabilitation of the sites, DHEC must establish reasonable guidelines for written reporting of such contamination. Reports made to DHEC concerning such contamination at a drycleaning facility cannot be used directly as evidence of liability for discharge in a civil or criminal trial arising out of the discharge.

The bill also establishes a 13-member Drycleaning Advisory Council, consisting of representatives of the drycleaning industry, real estate and other sectors, with this council required to advise DHEC on matters relating to regulations and standards that affect drycleaning and related industries. Also under these provisions, DHEC must establish a list of vendors qualified to perform work financed by the fund, with vendors required to be recertified every 2 years.

If adopted, these provisions would be effective July 1, 1995 and would be repealed July 1, 2015 unless reauthorized by the General Assembly. Furthermore, these provisions do not apply to a drycleaning facility in

existence on July 1, 1995 which uses only Stoddard solvents or its breakdown products, although the facility may be placed under these provisions if its owner or operator chooses to do so before October 1 of this year; if the owner or operator does not choose to place the facility under these provisions by that October date, however, then the current or future owner of the site cannot receive funds or assistance under these provisions or for sites the owner/operator previously abandoned.

Status: Approved by the House on April 26, 1995; currently pending in the Senate Agriculture and Natural Resources Committee.

Restructuring of Commission on Higher Education (H. 3915, House Education and Public Works Committee). This bill would change the composition of the Commission on Higher Education, increasing its size from 18 to 19 members. While 12 of the Commission's members would continue to be appointed from congressional districts, there no longer would be 6 at-large members under these provisions; instead, in place of those at-large appointments, would be 6 members representing public colleges and universities, appointed by the governor with the advice and consent of the Senate. Equitable representation by sector must be given on the commission by appointing members from public senior research institutions, 4-year public institutions of higher learning, and technical colleges or the State Board for Technical and Comprehensive Education. All 6 of the Commission members representing public colleges and universities must be members of the governing boards of their respective institutions, would serve as ex-officio members of the commission, and would be appointed as the terms of the current at-large appointees expire. The bill retains the current 2-term limit for commission members representing congressional districts but limits commission members representing public institutions of higher learning to 1 term. The bills also adds an ex-officio member to the commission, with this member representing independent colleges and universities and appointed by the governor with the advice and consent of the Senate. This ex-officio member must be serving as a member of the Advisory Council of Private College Presidents.

This bill also grants additional duties and functions to the Commission as pertains to public institutions of higher learning, requiring the commission to establish procedures for transferability of courses at the undergraduate level between 2 and 4-year institutions and schools; coordinate with the State Board of Education in approval of secondary education courses for the purpose of determining college entrance requirements; and review undergraduate admissions standards for in-state and out-of-state students.

Also under these provisions, a 12-member joint legislative committee is established to study the governance and operation of higher education in South Carolina. This committee must conduct a comprehensive review of the current governance structure of the state's higher education system; examine national trends in higher education governance structures and lines of

authority/relationship between boards of trustees and the commission; and investigate how higher education opportunities are currently provided to South Carolina students by examining the structure of higher education institutions. This committee must issue a final report by January 1, 1996, with the report serving as the decennial report of the Commission on Higher Education. This report would be submitted to the House Education and Public Works and Senate Education Committees and must be considered the first report required by the Decennial section of the Commission's Master Assessment Plan.

Status: Approved by the House on April 27, 1995; currently pending in the Senate Education Committee.

(3) LEGISLATION PENDING ON HOUSE CALENDAR
(as of Monday, May 15)

The following legislation is pending either on the House contested or uncontested calendar:

Establishment of Veterans' Cemeteries **(H. 3421, Rep. Keegan).** This bill allows the Department of Veterans Affairs to establish one or more cemeteries for burial of veterans and their immediate families. The Department may accept land in the name of the State or otherwise acquire land for these cemeteries upon approval of the county governing body where the cemetery is to be located; that county's legislative delegation; and the Budget and Control Board. The bill sets criteria for selection of cemetery sites (for example, allowing the Department to accept or purchase federal land formerly used for military bases) and requires the Department to supervised and maintain these cemeteries.

In order to qualify for a plot in these cemeteries, the applicant must be a veteran or a member of an immediate family of a veteran. The veteran must have an honorable discharge from the Armed Forces and must have been a South Carolina resident upon entering the Armed Forces, at death, or for 20 years (with the Department allowed to waive the 20-year requirement for compelling reasons). In a plot allocated to the veteran, the Department must bury the veteran and any member of his immediate family (if the family member can be buried above or below the veteran). The Department must bury the veteran without charge, while members of his immediate family must be buried for a fee or by use of Social Security allowance, with the fee or allowance not exceeding the cost of burial. A plot awarded under these provisions must be located at the cemetery closest to the veteran's residence (in order the Department receives applications and assuming all plots have not been obtained). Funding for the Department to acquire and construct these cemeteries is to be provided by the General Assembly in the annual general appropriation act or in a state capital improvement bond bill.

Status: Pending on the House uncontested calendar.

Law-Abiding Citizens Self-Defense Act of 1995 **(H. 3730, Rep. J. Young).** This bill provides for the issuance of concealed weapons permits by the State Law Enforcement Division (SLED) to South Carolina residents meeting certain requirements. For these purposes, a "concealable weapon" is one having a length of less than 12 inches, measured along its greatest dimension, which must be carried in a manner that is hidden from public view at all times except when needed.

Under these provisions, a person seeking this permit must be at least age 21, must have been a resident of this State for at least 180 days prior to application for a permit, and must provide proof of firearms training (such as completion of a course offered by a law enforcement agency or the National Rifle Association). In addition to paying the application fee of $50, the applicant must certify that he is not prohibited by state law from owning a weapon and that he understands that his permit must be revoked (and surrendered immediately to SLED) if he becomes prohibited under state law from possessing a weapon. If SLED determines that an applicant is not qualified to receive a permit, then SLED must issue a statement to the applicant specifying the reasons for denial. If an applicant does not meet the firearms training requirement, SLED must then offer him a handgun training course, at a cost of $50, that satisfies that requirement. Denials may be appealed to the Chief of SLED within 30 days from the date notice of denial was received. The chief must issue a decision within 10 days from the date the appeal is received, with an adverse decision subject to review by the Administrative Law Judge Division if the applicant files a petition. The permits are valid statewide but must be surrendered if the holder moves out of state. Permits to carry concealed weapons held by residents and issued by states which honor permits issued in accordance with these provisions must be honored by South Carolina.

The bill exempts from liability that may arise form issuance of a permit those medical personnel, law enforcement agencies and their personnel who in good faith provide information pertaining to a person's application for a permit. The bill also requires SLED to maintain a list of permit holders and the current status of each permit, with this information confidential and exempt from disclosure under the Freedom of Information Act. Permit holders must possess the permit identification card when carrying a concealed weapon and must present the card to a law enforcement officer upon request when the holder is carrying a concealed weapon. The bill also provides for replacement of missing or destroyed permit identification cards and requires holders who change address within South Carolina to inform SLED of such information. These provisions also provide for renewal of these permits, with the permits valid for 2 years and renewed upon payment of a $50 renewal fee, submission of photos of the applicant, and a favorable criminal background check. The Department of Revenue and Taxation must mark the driver's license of any permit holder in such a manner as to indicate he is authorized to carry a concealed weapon.

This permit to carry a concealed weapon does not authorize persons to carry these weapons into certain areas and buildings, such as police station, jails, meetings of governing bodies or places where carrying of these weapons is prohibited by federal law. The bill makes it a misdemeanor to carry a weapon into areas or places listed under these provisions, with the penalty upon conviction for this violation being a fine of not less than $1,000 and/or imprisonment not exceeding 1 year.

This bill also makes it a misdemeanor for a person under the influence of alcohol or a controlled substance to use a firearm in South Carolina, with punishment upon conviction for this offense being a fine of at least $2,000 or imprisonment of not more than 2 years. The bill also provides for chemical testing of persons if there is probable cause to believe a person was using a firearm while under the influence of alcohol or a controlled substance or if the person was arrested lawfully for an offense allegedly committed while using a firearm under the influence of alcohol or a controlled substance. Results of a test administered under these provisions to detect presence of a controlled substance are not admissible as evidence in a criminal prosecution for possession of a controlled substance; however, these test results are admissible in a trial of civil or criminal action or proceeding arising out of acts alleged to have been committed while using a firearm under the influence of alcohol or a controlled substance, with the test results creating the following presumptions:

(1) Blood alcohol content of .05 percent or less: Presumption that person was not under the influence of alcohol;

(2) Blood alcohol content in excess of .05 percent but less than .10 percent: Does not give rise to any presumption that person was or was not under influence of alcohol, but may be considered with other competent evidence in determining whether he was under such influence;

(3) Blood alcohol content of .10 percent or more: Prima facie evidence that the person was under the influence of alcohol.

Status: Pending on House second reading contested calendar. (House began debating this bill on Thursday, May 11, with debate expected to resume on May 16 or 17.)

State Lottery **(H. 3772, Rep. Scott).** This joint resolution proposes to amend the Constitution to authorize a state lottery. Under these provisions, revenues derived from the state lottery must be paid into a state lottery fund, to be invested by the State Treasurer and with interest earned remaining a part of the fund. No more than 15 percent of revenues each year from the lottery may be used for the lottery's operational expenses, while 50 percent of revenues must be expended as prizes. Remaining revenues must be used for nonrecurring expenses for public education (including public higher education), health care, water and sewer infrastructure, other capital improvements, reduction of bonded indebtedness, or for any combination of these purposes in the manner as provided by law by the General Assembly. If adopted by the General Assembly (requires two-thirds approval in each chamber---83 votes in the House, 31 votes in the Senate), then this joint resolution would be submitted as a constitutional amendment to the voters for approval at the November 1996 general election.

Status: House members recalled this measure from the House Judiciary Committee on May 3, 1995, by a vote of 59-47; measure currently pending on House second reading contested calendar.

Additional Judges for Court of Appeals, Circuit Court and Family Court (H. 3841, Rep. Sheheen). This bill adds 3 more judges to the Court of Appeals, expanding the number of judges on that court from 6 to 9, and adds 4 additional circuit court judges, with an additional judge each for the 5th Circuit (Kershaw and Richland Counties), 13th Circuit (Greenville and Pickens Counties), 15th Circuit (Georgetown and Horry Counties) and 16th Circuit (Union and York Counties). At least 1 of the 3 judges in the 9th Circuit (Berkeley and Charleston Counties) must be a resident of the lesser populated county, although this residency requirement does not preclude the re-election of any incumbent resident circuit court judge if this would result in more resident judges from a county in the circuit than otherwise permitted under these provisions.

The bill also expands the number of Family Court judges in South Carolina from 46 to 49, adding 1 judge each for the 5th, 13th and 15th circuits. In judicial circuits consisting of 5 counties (currently only the 14th circuit---Allendale, Beaufort, Colleton, Hampton and Jasper---has that many counties), at least 1 family court judge must reside in 1 of the 3 counties with the smallest populations in the circuit.

Status: Pending on the House second reading contested calendar.

Fingerprint Checks Required of Persons Applying for Operators and Employees of Day Care Facilities (S. 46, Sen. Jackson). This bill would require anyone applying for a license as an operator, seeking employment or to provide caregiver services at a child day care facility to undergo fingerprint checks, to be performed by the State Law Enforcement Division (SLED) and the FBI, to determine any criminal history the person may have. Any facility seeking licensure, registration or approval renewal, its employees, and its caregivers, who have not done so previously, would be required on the first renewal after June 30, 1995, or by June 30, 1996 (whichever is later) to undergo these fingerprint checks, with these checks (or reviews) not required for subsequent renewals.

The Department of Social Services (DSS) would be prohibited from issuing a new or renewed license, registration or approval for any type of child day care facility if the operator has been convicted of a felony or of various other listed offenses (such as murder, homicide by child abuse, drug trafficking, etc.) (Current law already prohibits DSS from issuing a license or registration for a facility if the operator has been convicted of an Offense Against the Person; an Offense Against Morality and Decency; or contributing to the delinquency of a minor.) A person convicted of one of these crimes who applies for a license as an operator, employment with, or is employed by, or who seeks to provide caregiver services with, or is a caregiver at a facility would be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding $5,000 and/or imprisonment not exceeding 1 year.

S. 46 also would eliminate DSS's authority to charge the licensee a fee for the cost of a SLED check and would prohibit SLED from charging more than $25 to conduct a check required under these provisions.

Status: Pending on the House second reading contested calendar.

(4) LEGISLATION PENDING IN HOUSE COMMITTEES
(as of Monday, May 15)

The following legislation is pending in various House committees.

Permission Required To Use Body Parts Removed from Body during Autopsy for Organ or Tissue Donation (H. 3334, Rep. Keyserling). This bill prohibits body parts removed from a body during performance of an autopsy or postmortem from being used for purpose of organ or tissue donations unless authorization for the donation is obtained from the decedent pursuant to the Uniform Anatomical Gift Act or from a person otherwise authorized to consent to the donation. Additionally, each county medical examiner performing an autopsy on a person who died because of violence or under suspicious circumstances must notify the family or next of kin of the decedent of any organs or tissue removed from the decedent's body during performance of the autopsy. In order to authorize donation of all or any part of a decedent's body, a person must receive counseling provided and witnessed by a health care professional or social worker; sign a statement acknowledging this counseling (witnessed by the health care professional or social worker who witnessed the counseling); and sign a consent form, with this form written in plain English which is understandable to a lay person.

Status: Pending in the House Medical, Military, Public and Municipal Affairs Committee.

South Carolina Charter Schools Act of 1995 (H. 3388, Rep. Richardson). This bill provides for the establishment of "charter schools" within the state's public school's districts, with the purposes of these schools being, among other things, to enhance learning opportunities in school communities across the State by ensuring schools have rigorous standards for pupil commitment to performance; encourage use of diverse and innovative teaching methods; provide parents and pupils expanded choices in types of education opportunities within the public school system and encourage greater parental and community involvement within public schools.

The bill defines a "charter school" as one which is public, non-sectarian , non-religious, non home-based and non-profit; and which operates within a public school district but which is accountable either to the State Board of Education or to the local school district board of trustees (depending on which entity grants the school its charter). A charter school must be administered and governed by a governing body in a manner agreed to by the charter school applicant and the approving body and cannot charge tuition. Enrollment in a charter school must be open to any child residing within the school district, although if applications for enrollment in the

school exceed available spaces, then pupils must be chosen via a random selection process. Under these provisions, charter schools are exempt from laws and regulations applicable to public schools (except for antidiscriminatory laws, health and safety standards, etc.) and cannot hire noncertified teachers in a ratio which is higher than 20 percent of its entire teacher staff. Any applicant wishing to form a charter school must organize the school as a nonprofit corporation under South Carolina law; elect a charter committee (i.e., governing board) for the school; and submit a charter school application to the State Board of Education or the local school board of trustees for the school district where the school will be located. The application must be a proposed agreement detailing, among other things, how facilities for the schools will be obtained and the goals, objectives and pupil achievement standards to be achieved. Either the State Board or the local school board must approve the agreement.

The bill also allows an existing public school to be converted into a charter school if two-thirds of the school's faculty and instructional staff, two-thirds of parents/legal guardians of students enrolled at the school, and a majority of members of the local school district board agree with filing an application with the State Board for conversion and formation of that school into a charter school. Any converted charter school must offer at a minimum the same grades or nongraded education appropriate for the same ages and education levels of pupils as offered by the school immediately before conversion.

Charters for these schools may be approved or renewed for a period not to exceed 3 school years, and the bill lists conditions (such as failure to meet pupil achievement standards) under which a charter may be revoked or not renewed. Upon dissolution of a charter school, its assets must be distributed in the manner as required by the South Carolina Nonprofit Corporation Act of 1994.

The bill allows teachers at public schools within the district where the charter school is located to be employed by the school; upon the teacher's request, he or she must be granted a 1-year leave of absence by the school district to teach at the charter school (with the leave of absence subject to renewal for an additional 2 years). The bill also provides for a teacher's seniority, vesting and benefits' rights while employed in the charter school. Pupils enrolled in a charter school must be included in the pupil enrollment of the district within which the pupil resides, and each student in the district must be credited with an equal amount of funding for his or her education, subject to appropriate student-based cost formulas. The State Department of Education must determine the amount of state funds to which the charter school is entitled and direct state officials to transmit these funds to the charter school. The governing body of the charter school may accept gifts, donations and grants of any kind made to the school, and these schools are exempt from all state and local taxation on their earnings and property.

Also under these provisions, a charter schools stimulus fund is established, a separate fund within the state general fund to provide financial support to charter school applicants and charter schools for start-up costs and costs associated with renovating and remodeling existing buildings and structures. Each qualifying charter school applicant or charter school may be awarded an initial grant not exceeding $100,000 during or before the first year of the school's operation. Additionally, applicants and charter schools receiving these initial grants may apply to the Department of Education for an additional grant not exceeding $100,000.

Status: Pending in the House Education and Public Works Committee.

Home School Students Permitted To Participate in Interscholastic Activities of the School Districts Where They Reside (H. 3467, Rep. Fair). This bill permits home school students to participate in interscholastic activities (such as athletics, music and speech) in the school district where they reside upon meeting several conditions, as listed below:

(1) the student's home schooling program is approved by his school district's board of trustees or conducted under the auspices of the South Carolina Association of Independent Home Schools;

(2) the student meets all school district eligibility requirements except for the district's school or class attendance requirements and the class/enrollment requirements of the associations administering interscholastic activities;

(3) the student is achieving academic and promotion standards prescribed by either the school district board or the Association of Home Schools;

(4) the student fulfills the same responsibilities and standards of behavior and performance required of other students participating in the activities and meets the same standards for acceptance on the team and squad; and

(5) the student resides within the attendance boundaries of the school in which he seeks to participate in interscholastic activities.

The bill also prohibits a public school student who has been unable to maintain academic eligibility from being eligible to participate in interscholastic activities as a home school student for the following year. For purposes of establishing academic eligibility for subsequent school years, the student must meet the academic and promotion standards as required by public school students to become eligible for the next year.

Status: Pending in the House Education and Public Works Committee.

Abolition of Tenure at Public Colleges and Universities (H. 3767, Rep. Witherspoon). This bill prohibits tenure from being granted to non-tenured faculty at public colleges and universities. Furthermore, the bill requires the governing board of each public college and university employing tenured faculty to develop a new employment relationship (within 2 years after these

provisions become effective) acceptable to the institution and to the tenured faculty, of which one component must include the elimination of tenure as part of the employment relationship.

Status: Pending in the House Education and Public Works Committee.

Governor To Appoint Justices and Judges from List of Nominees Submitted by a Judicial Merit Selection Commission (H. 3961 and 3962, Rep. Wilkins).

Currently in South Carolina, justices and judges of courts of uniform jurisdiction (Supreme Court, Court of Appeals, Circuit Court and Family Court) are elected by joint public vote of the General Assembly, with judges of the Administrative Law Judge Division also elected by legislators. Under the provisions of H. 3961 and 3962, however, justices and judges of these 5 court systems would be appointed by the governor (without any confirmation required by the General Assembly) from a list of nominees submitted by a newly-created judicial merit selection commission. Summarized below are two measures proposing this change---H. 3962, a proposed constitutional amendment to require these justices and judges to be selected by the governor from a list of nominees submitted by this new commission, and H. 3961, a bill serving as "implementing legislation" for creation of this new commission and its duties and responsibilities.

H. 3962 requires the governor to appoint these justices and judges from a list of nominees submitted by a newly-created Judicial Merit Selection Commission. This commission must nominate between 3 and 5 persons who its deems best qualified among all applicants for a particular vacancy on any of those courts. If fewer than 3 persons apply or agree to be considered for a vacancy, or if the commission concludes that there are fewer than 3 candidates qualified for a vacancy, then the commission must submit to the governor only the names of those applicants determined to be qualified, with a written explanation for submitting less than 3 names. If the commission submits at least 3 names to the governor, then he must select 1 of those nominees, but if fewer than 3 names are submitted, then the governor may reject those nominees and require the commission to submit additional nominations. If an incumbent justice or judge seeks another term and is found qualified by the commission, then only his name is forwarded to the governor for appointment, but if the commission does not find the incumbent justice or judge qualified, or the governor does not make the reappointment within 30 days of presentation, then the commission must submit additional names as provided above. The proposal also requires creation of a judicial merit selection commission to consider the qualifications and fitness of judicial candidates and to assist the governor in selecting qualified justices and judges for these 5 court systems. The General Assembly, by law, must provide for membership and duties of the commission (summarized below in H. 3961). If the General Assembly approves this proposal (requires two-thirds approval of the elected membership of the

House and the Senate), then it would be submitted as a constitutional amendment to the voters for approval at the November 1996 general election.

H. 3961 is a bill to implement by statute the newly-created judicial merit selection panel, as authorized under H. 3962, which, as previously noted, must assist the governor in selecting qualified justices and judges for vacancies (whether from death, resignation, etc.) in the Administrative Law Judge Division, Family Court, Circuit Court, Court of Appeals and Supreme Court (hereafter referred to as the "5 courts"). The bill also changes current statutes to require justices and judges of those courts to be appointed by the governor from nominees submitted by this new commission.

This commission consists of 12 members---4 appointed by the Speaker, 4 appointed by the Senate President Pro Tempore, and 4 appointed by the governor. None of the commission members may be a current member of the General Assembly, while 8 commission members (3 each appointed by the Speaker and Senate President Pro Tempore, and 2 appointed by the governor) must be practicing members of the South Carolina Bar (admitted to practice for at least 5 years), with the remaining 4 commission members being non-lawyers. Prior to making their respective appointments, the Speaker, Senate President Pro Tempore and Governor must solicit recommendations for their appointments to the commission from the President of the State Bar and Dean of the University of South Carolina School of Law. Commission members are ineligible for nomination and appointment as a judge or justice on any of these 5 court systems while serving on the commission and for 2 years after ceasing to be a commission member. Commission members also may not hold office in a political party and also may not hold appointed or elective office of the United States, the State or other governmental entity and may not serve more than 2 full 4-year terms on the commission.

Under this bill, the commission is responsible for determining when vacancies are to occur on these courts and investigating qualifications of candidates for those judicial positions. In carrying out these responsibilities, the commission may investigate and obtain information relative to any candidate from any state agency or other group; issue subpoenas requiring appearance of persons and production of information; and administer oaths and take dispositions.

After examining qualifications of judicial candidates, the commission (except in the case of incumbent judges) must select and send to the governor the names of 3-5 nominees whom it considers best qualified for the judicial office under consideration. If fewer than 3 persons apply or agree to be considered for the vacancy, or the commission concludes that fewer than 3 candidates are qualified, then the commission must report to the governor only those who applied or agreed to be considered and are determined to be qualified. If the commission submits at least 3 names to the governor, then he must select one of the nominees, but if fewer than 3 names are submitted, then the governor may reject those nominated and request further nominations from the commission. The bill prohibits any candidate for any of these 5 court systems from campaigning or lobbying

(whether directly or indirectly) the governor for appointment to the office sought until the commission has submitted its nominations. If a sitting justice or judge seeks re-election, then the commission must recommend him for reappointment unless 7 of the commission's 12 members vote to deny recommendation of another term for the incumbent. If reappointment is recommended, then the commission must submit only the incumbent's name to the governor; however, if the commission denies reappointment, or the governor does not reappoint the incumbent within 30 days of presentation, then the commission must submit a list of additional nominees.

Status: Both measures pending in House Judiciary Committee.

Business Development Corporations (H. 4015, Rep. Wilkins). This is a legislative proposal of the South Carolina Business Development Corporation, designed to enhance its ability to promote economic development for small business throughout South Carolina.

The bill deletes provisions which currently prohibit the amending of a business development corporation's charter to authorize additional classes of capital stock; with this deletion, the charter may be amended by the stockholders and members upon a two-thirds vote of each group to create a new class of capital stock. The bill also clarifies that the amount of capital stock which a member (financial institution) may acquire cannot exceed 5 percent of the member's capital and surplus (currently, such member cannot acquire more than 10 percent of his "loan limit") and makes provisions relating to voting by stockholders and members consistent with the change proposed in H. 4015 allowing for a new class of stock and to include such member and holders of this new class. Members and stockholders would continue to vote separately on matters by classes.

These provisions also clarify the document to be used to determine if the member is in compliance with statutory thresholds establishing limits on the total amount of outstanding loans, so that initially a member's limits are based on the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership. Thereafter, such limits are based upon the audited balance sheet of the member at the close of the fiscal year immediately preceding the first day of the fiscal year of the corporation for which the limit is to be determined (creating an "initial" standard and an "annual" standard). The bill increases from 2 to 5 percent the percentage of capital and surplus of commercial banks and trust companies and provides a mechanism to establish "loan limits" for when (1) 2 or more members, or (2) a member and another entity, merge or consolidate. The consolidated or merged organization must elect that its total amount on loan to the corporation must equal the combined loan limits of the members or the loan limit of the member merging or consolidating with the other entity, with this total amount to be determined immediately before the merger or consolidation.

The bill clarifies that the board of directors must be elected in the manner as prescribed in the charter and authorizes the board to issue shares of capital stock in the classes, series and denominations set forth in the charter, subject to the same restrictions as apply to any other corporate business entity organized under South Carolina law; however, no stock may be issued that would impair or limit the rights of members or stockholders as provided by law.

Finally, this legislation adds that the South Carolina Business Corporations Act (Title 33, Chapters 1-20 of the State's Code of Laws) applies to every business development organized by the State Business Corporations Act, and that if any conflict arises between the 2 acts, then the State Business Development Corporations Act must prevail.

Status: Pending in the House Labor, Commerce and Industry Committee

Special Inspectors Cannot Perform Certain Elevator Functions **(H. 4018, Rep. Cato).** This bill prohibits a special inspector from performing elevator inspections under the South Carolina Elevator Code or regulations promulgated pursuant to that Code on an elevator on which he or his employer has a current service or warranty contract.

Status: Pending in the House Labor, Commerce and Industry Committee.

Life without Parole upon Certain Number of Convictions **(S. 41, Sen. Courson).** This bill requires a sentence of life without parole for persons convicted a certain number of times of a "most serious offense" or a "serious offense".

Under these provisions, except when the death penalty is imposed, a person convicted for a "most serious offense" must be sentenced to life imprisonment without parole if he has at least 1 prior conviction for [1] a most serious offense; [2] a federal or out-of-state conviction for an offense which would be classified as a most serious offense under this bill; or [3] any combination of the offenses in [1] and [2]. Also except in death penalty cases, a person convicted of a "serious offense" must be sentenced to life without parole if he has at least 2 prior convictions for [1] a serious offense; [2] a most serious offense; [3] a federal or out-of-state offense that would be classified as a serious or most serious offense; or [4] any combination of offenses listed in [1-3].

The bill lists offenses which are classified as "most serious" ones, examples of which are murder, criminal sexual conduct, armed robbery. kidnapping and first degree burglary. A "serious offense" includes felonies which carry a maximum imprisonment of 30 years (except for felonies included above as "most serious"---murder, armed robbery, etc.) and a number of other felonies as listed in the bill (some of which are so-called "white collar" crimes---tax evasion, bribery, insurance fraud, etc., and some of which are violent crimes such as drug trafficking causing death while operating a

vehicle DUI, etc.) A "serious offense" also includes being an accessory before the fact for any of the offenses classified as "serious" or attempting to commit a "serious" offense.

Persons sentenced pursuant to these provisions are ineligible for parole except in limited circumstances (to be discussed later in this paragraph) and are ineligible for early release or release to relive prison overcrowding. However, a person sentenced pursuant to this act may be paroled if (1) the Department of Corrections requests the Department of Probation, Parole and Pardon (DPPS) to consider the person for parole; (2) DPPS determines that because of health or age the person is no longer a threat to society, and (3) the person meets 1 of the following 4 requirements:

(a) has served at least 30 years of the sentence imposed pursuant to this bill and is at least age 65;

(b) has served at least 20 years of the sentence imposed pursuant to this bill and is at least age 70;

(c) is afflicted with a terminal illness where life expectancy is 1 year or less; or

(d) can produce evidence comprising the most extraordinary circumstances.

For purposes of determining a conviction under these provisions, if the person was convicted for multiple offenses which were committed during a single chain or circumstances, a single course of conduct, connected transactions, or times so closely connected in point of time that they may be considered as one offense, then such multiple convictions must be treated as 1 conviction.

Status: Approved by the Senate on April 5, 1995; currently pending in the House Judiciary Committee.

Exemption from Sunday "Blue Laws" (S. 375, Sen. Jackson). Currently in South Carolina, each county is exempted from the State's Sunday "Blue Laws" upon collecting more than $900,000 in accommodations taxes. Presently, only 4 of the state's 46 counties---Beaufort, Charleston, Greenville and Horry---surpass that figure, although Richland County is expected to surpass the $900,000 figure this year. In counties without a complete exemption from the Blue Laws, retail establishments may not open on Sundays before 1:30 p.m., although there is no limit as to their closing time that day.

S. 375 would allow a county governing body to suspend the "Blue Laws" within that county by ordinance, but if the governing body refused to do so, then the question of continuance of these laws must be placed on the ballot at the November 1996 general election, with results determined on a county-by-county basis (i.e., some counties might vote to continue these laws, while others might vote to end them.) If the result of the referendum is against continued application of the Blue laws, then the Sunday work restrictions would not apply within the particular county once the

referendum results are certified to the Secretary of State. This November 1996 referendum also is required in counties which qualified for the Blue Laws exemption because of accommodation tax collections (i.e., surpassing the $900,000 figure) after May 8, 1985. The bill continues current provisions which protect workers who conscientiously object to Sunday work and which prohibit retail establishments from being forced by their lessor or franchisor to open on Sundays, along with provisions protecting persons who regular day of worship is Saturday from discrimination.

Also under these provisions, once a county collects more than $900,000 in accommodations taxes in a fiscal year, then the county's complete exemption from the Blue Laws would continue from year to year (i.e., permanently), even if in subsequent years the county's accommodation tax collections fall below the $900,000 yearly figure. The bill further provides that when a municipal or county governing body issues a Sunday permit allowing athletic events, public exhibitions, historical or musical entertainments or concerts to be held prior to 1:30 pm on Sundays, that governing body by resolution may suspend the current prohibition against businesses opening before that hour on Sunday and instead may allow businesses to operated after 10 am that day.

Status: Passed the Senate on March 29, 1995; currently pending in the House Judiciary Committee.

Auto Insurance Reform **(S. 628, Senate Banking and Insurance Committee).** This bill would reform several provisions pertaining to South Carolina's auto insurance laws. Among the features of this bill are the following:

---Elimination of "base" rate and "objective standards" rate, with insurers instead required to offer one or more rates, including rates approved for policies ceded to the Reinsurance Facility. Thus, the state's current "two" rate system is replaced with rating tiers in the voluntary market and rates for risks ceded to the Facility.

---Repeals the mandate that insurance companies in the voluntary market write auto physical damage coverages for all South Carolina drivers, although these "non-mandated" coverages may be ceded to the Reinsurance Facility, at the self-sustaining "facility physical damage rate." Also provides for single interest collision coverage and requires designated agents to write physical damage coverage to those persons written by them requesting such coverage.

---Prohibits an insurer from refusing to write or renew physical damage coverage because of race, color, creed, religion, national origin, ancestry, location of residence, economic status or occupation. If an insurer is found to be participating in these discriminatory practices, then the Chief Insurance Commissioner may impose a maximum fine of $200,000 on the insurer.

---Freezes recoupment fees for the next fiscal year (July 1, 1995 through June 30, 1996) at the same level as they currently are for the current fiscal year of July 1, 1994 through June 30, 1995. Unrecouped losses resulting from this freeze would be spread out evenly over a 3-year period.

---Requires the Department of Insurance, beginning January of 1997, to be managed by an insurance commissioner elected by the public in the general election (beginning in 1996); like candidates for a constitutional office, candidate for the office of Insurance Commissioner must file for election and be nominated in the same manner.

Status: Pending in the House Labor, Commerce and Industry Committee.

Total copies 580
Total cost $ 690.20
Cost per copy $ 1.19
Date 5-16-95
S. C. Legislative Council